

Electronic Benefit Transfer (EBT) Project



Request for Proposal for EBT Services

Section 2, Rules Governing Competition

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RFP-OSI-0530-204
Addendum #1

June 13, 2007

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2 Rules Governing Competition

2.1 Identification and Classification of RFP Requirements

2.1.1 Requirements

The state has established certain requirements with respect to bids to be submitted by prospective contractors. The use of “shall” in the RFP indicates a requirement or condition from which a deviation, if not material, may be waived by the state. A deviation from a requirement is material if the deficient response is not in substantial accord with the RFP requirements, provides an advantage to one bidder over other bidders, or has a potentially significant effect on the delivery, quantity or quality of items bid⁵, amount paid to the bidder, or on the cost to the state. Material deviations cannot be waived.

2.2 Bidding Requirements and Conditions

2.2.1 General

This RFP, the evaluation of responses, and the award of any resultant contract shall be made in conformance with current competitive bidding procedures as they relate to the procurement of goods and services by public bodies in the State of California. A bidder’s final bid is an irrevocable offer for 180 calendar days following the scheduled date for contract award specified in Section 1.10, Key Action Dates. A bidder may extend the offer in the event of a delay of contract award.

2.2.2 RFP Documents

This RFP includes, in addition to an explanation of the state’s needs which must be met, instructions which prescribe the format and content of bids to be submitted and the model of the contract to be executed between the state and the successful bidder.

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the bidder shall immediately notify the state of such error in writing and request clarification or modification of the document. Modifications will be made by addenda issued pursuant to Section 2.2.7, Addenda. Such clarifications shall be given by written notice to all parties who have been furnished an RFP for bidding purposes, without divulging the source of the request for same. Insofar as practicable, the state will give such notices to other interested parties, but the state shall not be responsible therefore.

If the RFP contains an error known to the bidder, or an error that reasonably should have been known, the bidder shall bid at its own risk. If the bidder fails to notify the state of the error prior to the date fixed for submission of bids, and is awarded the contract, the bidder shall not be entitled to additional compensation or time by reason of the error or its later correction.

⁵ In this solicitation document, the word “bid” as used throughout is intended to mean “proposed,” “propose,” or “proposal,” as appropriate.

2.2.3 Examination of the Work

The bidder should carefully examine the entire RFP and any addenda thereto, and all related materials and data referenced in the RFP or otherwise available to the bidder, and should become fully aware of the nature and location of the work, the quantities of the work, and the conditions to be encountered in performing the work. Specific conditions to be examined are listed in Section 5, Administrative and Bidder Requirements.

2.2.4 Questions Regarding the RFP

Bidders requiring clarification of the intent or content of this RFP or on procedural matters regarding the competitive bid process may request clarification by submitting questions, in an e-mail or envelope clearly marked "Questions Relating to RFP-OSI-0530-204," to the Procurement Official listed in Section 1.9, Procurement Official. To ensure a response, questions must be received in writing by the scheduled date given in Section 1.10, Key Action Dates. If a bidder submits a question after the scheduled date the state will attempt to answer the question but does not guarantee that the answer will be prior to the proposal due date. Question and answer sets will be provided to all bidders. The state will publish the questions as they are submitted including any background information provided with the question; however, the state at its sole discretion may paraphrase the question and background content for clarity.

2.2.5 Request to Change the Requirements of the RFP and Contract Terms

If the bidder believes that one or more of the RFP requirements and/or contract terms is onerous, unfair, or imposes unnecessary constraints to the bidder in proposing less costly or alternate solutions, the bidder may request a change to the RFP or contract by submitting, in writing, the recommended change(s) and the facts substantiating this belief and reasons for making the recommended change. Such request must be submitted to the Procurement Official by the date specified in Section 1.10, Key Action Dates, for submitting a request for change. Oral answers shall not be binding on the state. [Bidders are advised the state, except for an extraordinary situation, does not intend to negotiate requirements or contract terms and conditions after submission of the final proposal.](#)

2.2.6 Bidder's Intention to Submit a Bid

Bidders who have been furnished a copy of the RFP for bidding purposes are asked to state their intention by the date specified in Section 1.10, Key Action Dates, with respect to submission of bids. The state is also interested as to a bidder's reasons for not submitting a bid; as, for example, requirements which cannot be met or unusual terms and conditions which arbitrarily raise costs. The bidder is asked to categorize its intent as follows:

- Intends to submit a bid and has no problem with the RFP requirements and/or the contract.

- Intends to submit a bid, but has one or more problems with the RFP requirements and/or the contract for reasons stated in its response.
- Does not intend to submit a bid, for reasons stated in its response, and has no problem with the RFP requirements and/or the contract.
- Does not intend to submit a bid because of one or more problems with the RFP requirements and/or the contract for reasons stated in its response.

If bidders have indicated significant problems with the RFP requirements, the state will examine the stated reasons for the problems and will attempt to resolve any issues in contention, if not contrary to the state's interest, and will amend the RFP, if appropriate. All bidders who have been furnished a copy of this RFP for bidding purposes will be advised by the state of any actions taken as a result of the bidders' responses. If after such actions, a bidder determines that the requirements of the RFP unnecessarily restrict its ability to bid, the bidder is allowed five (5) working days to submit a protest to those RFP requirements or the state's action, according to the instructions contained in Section 2.4.1, Protests.

Hereafter, for the purposes of the instructions of this RFP, each bidder who has indicated its intent to submit a final bid is called a bidder until such time that the bidder withdraws or other facts indicate that the bidder has become nonparticipating.

2.2.7 Addenda

The state may modify the RFP prior to the date fixed for contract award by issuance of a notification to all bidders that are participating in the procurement process at the time the addendum is issued that an addendum has been issued, unless the amendments are such as to offer the opportunity for nonparticipating bidders to become participating, in which case the addendum will be sent to all parties receiving the RFP for bidding purposes. Addenda will be numbered consecutively. If any bidder determines that an addendum unnecessarily restricts its ability to bid, the bidder is allowed five (5) working days to submit a protest to the addendum according to the instructions contained in Section 2.2.5, Request to Change the Requirements of the RFP and Contract Terms.

2.2.8 Bonds⁶

The state reserves the right to require a faithful performance bond as specified in the RFP from the bidder in an amount not to exceed the amount of the contract. In the event a performance bond is required by the state which has not been expressly required by the specification, the state will reimburse the bidder, as an addition to the purchase price, in an amount not exceeding the standard premium on such bond.

⁶ For this procurement, the state is not seeking a performance bond. Instead, the bidder will be asked to provide a Letter of Credit. Refer to RFP Section 5.5, Letter of Credit, for more information.

2.2.9 Air or Water Pollution Violations

Unless the contract is less than \$5,000 or with a sole source contractor, Government Code Section 4477⁷ prohibits the state from contracting with a person, including a corporation or other business association, who has been determined to be in violation of any state or federal air or water pollution control law. Government Code Section 4481 requires the State Water Resources Control Board and the Air Resources Board to notify state agencies of such persons.

Prior to an award, the department shall ascertain if the intended awardee is a person included in notices from the boards by reference to notices. In the event of any doubt of the intended awardee's identity or status as a person who is in violation of any state or federal air or water pollution law, the state will notify the appropriate board of the proposed award and afford the board the opportunity to advise the department that the intended awardee is such a person.

No award will be made to a person who is identified either by the published notices or by advice, as a person in violation of state or federal air or water pollution control laws.

2.2.10 Fair Employment and Housing Commission Regulations

Government Code Section 12990 requires all state contractors to have implemented a Nondiscrimination Program before entering into any contract with the state. The Department of Fair Employment and Housing (DFEH) randomly selects and reviews state contractors to ensure their compliance with the law. The DFEH periodically disseminates a list of vendors who have not complied. Any vendor so identified is ineligible to enter into any state contract.

2.2.11 Exclusion for Conflict of Interest

No consultant shall be paid out of state funds for developing recommendations on the acquisition of products or services or assisting in the preparation of a feasibility study, if that consultant is to be a source of such acquisition or could otherwise directly and/or materially benefit from state adoption of such recommendations or the course of action recommended in the feasibility study. Further, no consultant shall be paid out of state funds for developing recommendations on the disposal of state surplus products, if that consultant would directly and/or materially benefit from state adoption of such recommendations.

2.2.12 Follow-on Contracts

No person, firm, or subsidiary thereof who has been awarded a consulting services contract, or a contract which includes a consulting component, may be awarded a contract for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end

⁷ For more information on Government Code and Public Contract Code, please refer to the following web site: <http://www.leginfo.ca.gov/calaw.html>.

product of the consulting services contract. Therefore, any consultant who contracts with a state agency to develop formal recommendations for the acquisition of products or services is precluded from contracting for any work recommended in the formal recommendations. (Formal recommendations include, among other things, feasibility studies.)

2.2.13 Disclosure of Financial Interests

Proposals in response to state procurements for assistance in preparation of feasibility studies or the development of recommendations for the acquisition of products and services must disclose any financial interests (i.e., service contract, Original Equipment Manufacturer [OEM] agreements, remarketing agreements, etc.) that may foreseeably allow the individual or organization submitting the proposal to materially benefit from the state's adoption of a course of action recommended in the feasibility study or the acquisition recommendations. If, in the state's judgment, the financial interest will jeopardize the objectivity of the recommendations, the state may reject the proposal.

In addition, should a consultant establish or become aware of such a financial interest during the course of contract performance, the consultant must inform the state in writing within ten (10) business days. If, in the state's judgment, the newly established financial interest will jeopardize the objectivity of the recommendations, the state shall have the option of terminating the contract.

Failure to disclose a relevant financial interest on the part of a consultant will be deemed grounds for termination of the contract with all associated costs to be borne by the consultant and, in addition, the consultant may be excluded from participating in the state's bid processes for a period of up to 360 calendar days in accordance with Public Contract Code Section 12102(j).

2.3 Bidding Steps

2.3.1 Preparation of Proposals

Exhibit 2.1, Competitive Bidding and Proposal Responsiveness, located at the end of this section, emphasizes the requirements of competitive bidding and contains examples of common causes for rejection of proposals. Bidders are encouraged to review this exhibit.

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of the bidder's compliance with the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.

Before submitting each document, the bidder should carefully read the proposal for errors and adherence to the RFP requirements.

2.3.2 Bidder's Intention to Submit a Proposal

Bidders that want to participate in the RFP steps are encouraged to submit a notification of intention to propose on this procurement to receive notifications. Only those bidders that submit a letter stating that they intend to submit a proposal for the RFP will receive notifications regarding this procurement. The letter should identify the contact person for the solicitation process, plus his/her telephone and fax numbers and e-mail address. The state is responsible for notifying one (1) contact person per bidder. Information related to a bidder will be given to the designated contact person. It shall be the bidder's responsibility to immediately notify the Procurement Official, in writing, regarding any revisions to the information. The state shall not be responsible for proposal correspondence not received by the bidder if the bidder fails to notify the state, in writing, of any revisions.

Bidders who wish to participate are asked to return a Letter of Intent to Bid to the Procurement Official listed in Section 1.9, Procurement Official, to ensure they remain on the state's official list of participating bidders. If the letter is not submitted by the date as specified in Section 1.10, Key Action Dates, or the bidder does not participate in a bid step, the state reserves the right to drop them from the participating bidder list and they will not receive any further correspondence until they contact the Procurement Official and indicate that they would like further correspondence.

2.3.3 Draft Proposals

Submission of a draft proposal is strongly recommended so that the bidder may obtain the benefit of the two-step procurement process. If draft proposals are submitted, bidders must submit them by the date and time as specified in Section 1.10, Key Action Dates. The draft proposals must be complete in all respects except that the cost information **must not be included**. The state Evaluation Team will evaluate each draft proposal received by the draft proposal submission date in the timeframe specified in Section 1.10, Key Action Dates, unless the draft proposal is so defective that the state does not believe that its time to evaluate the draft proposal would result in the bidder being able to correct the deficiencies prior to the final proposal due date, or the bidder has placed conditions on the proposal that are unacceptable to the state. For draft proposals that are evaluated, the bidder will be notified of any defects the state has noted. Draft proposals received late may be reviewed if the Procurement Official believes there is enough time and resources to do so. Notifying the bidder of defects is intended to minimize the risk that the final proposal will be deemed noncompliant; however, the state will not provide any warranty that all defects in the draft proposal have been detected and that such notification will not preclude rejection of the final proposal if such defects are later found.

2.3.4 Confidential Discussions

The state will conduct confidential discussions with bidders submitting draft proposals that have been reviewed by the state. At the confidential discussion, the state will identify areas of the bidder's draft proposal that may not be fully compliant with the requirements of the RFP and areas that are confusing to the state Evaluation Team.

Oral statements made by either party during confidential discussions shall not be binding.

2.3.5 Final Proposal

2.3.5.1 Submission of Final Proposal

Proposals must be complete in all respects as required by Section 8, Proposal Format. A final proposal may be rejected if it is conditional or incomplete or if it contains any alterations of form or other irregularities of any kind. A final proposal will be rejected if any such defect or irregularity constitutes a material deviation from the RFP requirements. The final proposal must contain all costs required by Section 7, Cost Proposal. Cost data, including any electronic copies (as identified in Section 8, Proposal Format) must be submitted under separate, sealed cover. If the cost data is not submitted under separate sealed cover, the proposal will be rejected. Section 8, Proposal Format, describes specific guidelines applicable to the submission of the final proposal to the RFP and is applicable to the new final proposal if all original final proposals are declared flawed by the state Evaluation Team.

2.3.5.1.1 Bidder's Cost

Costs for developing proposals are entirely the responsibility of the bidder and shall not be chargeable to the state.

2.3.5.1.2 Completion of Proposals

Proposals must be complete in all respects as required by Section 8, Proposal Format. A final proposal may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. A final proposal must be rejected if any defect or irregularity constitutes a material deviation from the RFP requirements. The final proposal must contain all costs required by Section 7, Cost Proposal, including any electronic copies, and must be submitted under a separate, sealed cover.

Exhibit 2.1, Competitive Bidding and Proposal Responsiveness, emphasizes the requirements of competitive bidding and contains examples of common causes for rejection of proposals. Bidders are encouraged to review this exhibit.

2.3.5.1.3 False or Misleading Statements

Proposals which contain false or misleading statements or which provide references which do not support an attribute or condition claimed by the bidder may be rejected. If, in the opinion of the state, such information was intended to mislead the state in its evaluation of the proposal and the attribute, condition, or capability is a requirement of this RFP, it will be the basis for rejection of the proposal.

2.3.5.2 Signature of Proposal

A cover letter (which shall be considered an integral part of the submission) shall be signed by an individual who is authorized to bind the bidding firm contractually. The signature must indicate the title or position that the individual holds in the firm. **An**

unsigned final proposal will be rejected. Refer to Section 5.3, Cover Letter and Executive Summary.

2.3.5.3 Delivery of Proposals and Bids

The draft proposal and final proposal must be submitted by the date and time as specified in Section 1.10, Key Action Dates. If mailed, proposals must be received by the OSI on or before the specified date and time. Mail or deliver proposals to the OSI Procurement Official listed in Section 1.9, Procurement Official. If mailed, it is suggested that bidders use certified or registered mail with return receipt requested as delivery of proposals is done at the bidder's own risk of untimely delivery, lost mail, etc.

Proposals must be received in the number of copies stated in Section 8, Proposal Format, and no later than the dates and times specified in Section 1.10, Key Action Dates. One (1) copy must be clearly marked "Master Copy." All copies of proposals must be under sealed cover which is to be plainly marked "Draft Bid," or "Final Bid" for "RFP-OSI-0530-204." **Final proposals not received by the date and time as specified in Section 1.10, Key Action Dates, will be rejected.**

As required in Section 8, Proposal Format, all cost data must be submitted under separate, sealed cover and clearly marked. If cost data is not submitted separately sealed, the proposal will be rejected. Proposals submitted under improperly marked covers may be rejected. If discrepancies are found between two (2) or more copies of the proposal, the proposal may be rejected. However, if not rejected, the Master Copy is the basis for resolving discrepancies.

2.3.6 Withdrawal and Resubmission/Modification of Proposals

A bidder may withdraw its final proposal at any time prior to the proposal submission date and time specified in Section 1.10, Key Action Dates, by submitting a written notification of withdrawal signed by the bidder authorized in accordance with Section 2.3.5.2, Signature of Proposal. The bidder may thereafter submit a new or modified proposal prior to such proposal submission time. Modification offered in any other manner, oral or written, will not be considered. Final proposals cannot be changed or withdrawn after the time designated for receipt, except as provided in this section.

2.3.7 Clarification of Final Proposal

During the evaluation of the Final Proposal, the state Evaluation Team may ask the bidder to clarify its submitted information but will not allow the bidder to change its proposal.

2.3.8 Flawed Final Proposals

At the state's sole discretion it may declare the final proposal to be a draft proposal in the event that the state Evaluation Team determines the final proposals from all bidders contain material deviations. A bidder may not protest the Evaluation Team's determination that all proposals have material deviations. If all proposals are declared noncompliant, the state will issue an addendum to the RFP and confidential discussions

will be held with bidders who are interested in continuing to be considered. Each bidder will be notified of the due date for the submission of a new final proposal to the state. This submission must conform to the requirements of the original RFP as amended by any subsequent addenda. The new final proposals will be evaluated as required by Section 9, Proposal Evaluation.

2.3.9 Confidentiality

Final proposals are public upon opening; however, the contents of all proposals, correspondence, agenda, memoranda, or any other medium which discloses any aspect of a bidder's proposal will be held in confidence until the Notification of Intent to Award has been issued. Bidders should be aware that marking a document "confidential" or "proprietary" may exclude it from consideration for award. However, if accepted for evaluation by the state, such marking in a final proposal will not keep the document, after Notification of Intent to Award, from being released as part of the public record, unless a court has ordered the state not to release the document. The content of all working papers and discussions relating to the bidder's proposal, if retained, will be held in confidence indefinitely unless the public interest is best served by an item's disclosure because of its direct pertinence to a decision, agreement, or the evaluation of the proposal. Any disclosure of confidential information by the bidder is a basis for rejecting the bidder's proposal and ruling the bidder ineligible to further participate.

Maintaining the confidentiality of information that is designated as confidential by the state is paramount; it cannot be overemphasized.

2.3.10 Demonstration

The demonstration is intended to provide the state the ability to verify the claims made by the bidder in response to the requirements specified in Section 6, Business and Technical Requirements. During the demonstration, the bidder must demonstrate that a state-selected sample of mandatory requirements can be satisfied by the bidder's proposed solution. The state-selected requirements are specified in Section 10, Demonstration. In addition, the state may identify additional requirements of this procurement during the evaluation of final proposals that must be demonstrated. If additional requirements are identified for demonstration, the bidder will be notified at least five (5) business days before the demonstration that these additional requirements will be part of the demonstration. Demonstrations will be performed by the bidders as part of the state's evaluation of the bidder's technical and administrative components of the final proposal. Demonstrations will be evaluated and scored in accordance with the criteria specified in Section 9, Proposal Evaluation, and Section 10, Demonstration.

2.3.11 Sealed Cost Opening

Final proposals will not have their sealed cost envelopes opened until the state has evaluated and scored all technical proposals. Cost proposals will only be opened for responsive proposals from responsible bidders. On the date of the cost opening, the state will post a summary of the points awarded to each bidder. This summary will be provided to all the bidders and the public in attendance at the cost opening as well as persons who request the summary.

2.3.12 Rejection of Proposals

The state may reject any or all proposals and may waive any immaterial deviation or defect in a proposal. The state's waiver of any immaterial deviation or defect shall in no way modify the RFP documents or excuse the bidder from full compliance with the RFP specifications if awarded the contract.

2.3.13 Evaluation and Selection Process

2.3.13.1 General

Final proposals will be evaluated according to the procedures contained in Section 9, Proposal Evaluation.

2.3.13.2 Evaluation Questions

During the evaluation and selection process, the state may require the bidder to answer specific questions and provide clarification, as long as the answers and clarification are in writing.

2.3.13.3 Errors in the Final Proposal

An error in the final proposal may cause the rejection of that proposal; however, the state may at its sole option retain the proposal and make certain corrections.

In determining if a correction will be made, the state will consider the conformance of the proposal to the format and content required by the RFP, and any unusual complexity of the format and content required by the RFP.

The state may at its sole option correct obvious clerical errors.

The state may at its sole option correct discrepancy and arithmetic errors on the basis that if intent is not clearly established by the complete proposal submittal, the master copy shall have priority over additional copies, and the proposal master copy narrative shall have priority over the cost sheets. If necessary, the extensions and summary will be recomputed accordingly, even if the lowest level of detail is obviously misstated. The total price of unit-price items will be the product of the unit price and the quantity of the item. If the unit price is ambiguous, unintelligible, uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the total price by the quantity of the item.

If a bidder does not follow the instructions for computing costs not related to the contract (e.g., state personnel costs), the state may reject the proposal or, at its sole discretion, re-compute such costs based on instructions contained in the RFP.

The state may at its sole option correct errors of omission, and in the following three (3) situations, the state will take the indicated actions if the bidder's intent (as determined by the state) is not clearly established by the complete proposal submittal:

- If an item is described in the narrative and omitted from the cost data provided in the proposal for evaluation purposes, it will be interpreted to mean that the item will be provided by the bidder at no cost.
- If an item is not mentioned at all in the final proposal, the proposal will be interpreted to mean that the bidder does not intend to supply that item.
- If an item is omitted, and the omission is not discovered until after contract award, the bidder shall be required to supply that item at no cost.

It is absolutely essential that bidders carefully review the cost elements in their final proposal.

In the event an ambiguity or discrepancy between the general requirements described in Section 4, Proposed System, and the specific requirements set forth in Section 5, Administrative and Bidder Requirements, and Section 6, Business and Technical Requirements, is detected after the opening of proposals, Sections 5 and 6, and the bidder's response thereto, shall have priority over Section 4.

2.3.14 Award of Contract

Award of contract, if made, will be in accordance with Section 9, Proposal Evaluation, to a responsible bidder whose final proposal complies with all the requirements of the RFP documents and any addenda thereto, except for such immaterial defects as may be waived by the state. Award, if made, will be made within 180 calendar days after the scheduled date for contract award specified in Section 1.10, Key Action Dates, unless a protest is received. If a protest is received, the award, if made, will be made within 180 calendar days after the protest is resolved.

The state reserves the right to modify or cancel, in whole or in part, its RFP prior to contract award.

2.3.15 Debriefing

A debriefing may be held after contract award at the request of any bidder for the purpose of receiving specific information concerning the evaluation. The discussion will be based primarily on the technical and cost evaluations of the bidder's final proposal. A debriefing is not the forum to challenge the RFP specifications or requirements.

2.4 Other Information

2.4.1 Protests

Before a protest is submitted regarding any issue other than selection of the "successful bidder," the bidder must make full and timely use of the procedures described in this section to resolve any outstanding issue(s) between the bidder and the state. The procurement procedure is designed to give the bidder and the state adequate opportunity to submit questions and discuss the requirements before the final proposal is due. The protest procedure is made available in the event that a bidder cannot reach

a fair agreement with the state after exhausting these procedures. There are two (2) types of protest: requirements protest and award protest.

2.4.1.1 Requirements Protest

A protest regarding any issue other than selection of the “successful bidder” is a requirements protest and will be heard and resolved by the Director of the OSI, whose decision will be final. All requirements protests must be received as promptly as possible, but not later than the date and time specified in Section 1.10, Key Action Dates.

All requirements protests must be made in writing, signed by an individual who has contractual authority to bind the company, and contain a statement of the reason(s) for protest; citing the law, rule, regulation, or procedures on which the protest is based. The bidder must provide facts and evidence to support the claim. Protests must include the RFP number and be mailed or delivered to:

Judy Wong
Office of Systems Integration, Procurement Center
3835 N. Freeway Boulevard, Suite 110
Sacramento, CA 95834
Telephone: (916) 263-3264

2.4.1.2 Award Protest

An award protest is where a bidder has submitted a final proposal which it believes to be totally responsive to the requirements of the RFP and to be the proposal that should have been selected according to the evaluation procedure in Section 9, Proposal Evaluation. Upon that occurrence, and if the bidder believes the state has incorrectly selected another bidder for award, the bidder may submit an award protest as described below. Protests regarding selection of the “successful bidder” will be heard and resolved by the Department of General Services, whose decision will be final.

The Notice of Intent to Award shall be posted in a public place at the OSI Procurement Center and on the EBT Project website (www.ebtproject.ca.gov) for five (5) working days prior to awarding the contract.

If any bidder, prior to award of the contract, files a protest with the Department of General Services and the OSI on the grounds that the protesting bidder would have been awarded the contract had the agency correctly applied the evaluation standard in the RFP, or if the agency followed the evaluation and scoring methods in the RFP, the agreement shall not be awarded until either the protest has been withdrawn or the Department of General Services has decided the matter. It is suggested that a protesting bidder submit any protest by certified or registered mail unless delivered in person, in which case the protesting bidder should obtain a receipt of delivery.

Within five (5) days after filing the initial protest, the protesting bidder shall file with the Department of General Services and the OSI a detailed statement specifying the grounds for the protest.

The detailed statement must be made in writing, signed by an individual who has contractual authority to bind the company, and contain a statement of the reason(s) for protest; citing the law, rule, regulation, and/or procedures on which the protest is based. The protesting bidder must provide facts and evidence to support the claim. Protests must include the RFP number and be mailed or delivered to:

Department of General Services

Department of General Services,
Office of Legal Services
Procurement Division
707 Third Street, Suite 7-330
West Sacramento, CA 95605

Office of Systems Integration

Office of Systems Integration,
Procurement Center
3835 North Freeway Boulevard
Suite 110
Sacramento, CA 95834

2.4.2 News Releases

Any publications or news releases relating to a contract resulting from this RFP shall not be made without prior written approval from the Procurement Official listed in Section 1.9, Procurement Official.

2.4.3 Disposition of Proposals

All materials submitted in response to this RFP will become the property of the state and will be returned only at the state's option and at the bidder's expense. At a minimum, the master copy shall be retained for official files and will become a public record after the Notification of Intent to Award as specified in Section 1.10, Key Action Dates. However, materials the state considers confidential financial information (such as confidential financial information submitted to show bidder responsibility) will be returned upon request of the bidder.

EXHIBIT 2.1, COMPETITIVE BIDDING AND PROPOSAL RESPONSIVENESS

Competitive bidding is not defined in any single statute but is more in the nature of a compendium of numerous court decisions. From such court decisions, the following rules have evolved, among others:

1. The RFPs must provide a basis for full and fair competitive bidding among bidders on a common standard, free of restrictions tending to stifle competition.
2. The state may modify the RFP, prior to the date fixed for contract award, by issuance of an addendum to all parties who are bidders.
3. To have a valid proposal, the proposal must respond and conform to the RFP, including all the documents which are incorporated therein. A proposal which does not literally comply may be rejected.
4. For a variance between the RFPs and the proposal to be such as to preclude acceptance (the proposal must be rejected), the variance or deviation must be a material one.
5. State agencies usually have the express or implied right to reject any and all proposals in the best interests of the state. Bids cannot, however, be selectively rejected without cause.
6. Proposals cannot be changed after the time designated for receipt and opening thereof. No negotiation as to the scope of the work, amount to be paid, or contractual terms is permitted. However, this does not preclude the state from clarifying the bidder's intent by asking questions and considering the answers.
7. A competitive proposal, once opened and declared, is in the nature of an irrevocable option and a contract right of which the public agency cannot be deprived without its consent, unless the requirements for rescission are present. All proposals become public documents.
8. Proposals cannot be accepted "in part," unless the RFP specifically permits such an award.
9. Contracts entered into through the competitive bidding process cannot later be amended, unless the RFP includes a provision, to be incorporated in the contract awarded, providing for such amendment.

Since competitive procurement became the required method for securing certain goods or services, the state has received a number of proposals which were deemed to be nonresponsive to an RFP or which could not be considered as valid proposals within the competitive bidding procedures. Nonresponsive proposals which contain qualifiers must be rejected. Many of the causes for rejection arise from either an incomplete understanding of the competitive bidding process or administrative oversight on the part of the bidders. The following examples are illustrative of more common causes for rejection of proposals. These examples are listed to assist potential bidders in submission of responsive proposals:

1. A proposal stated, "The prices stated within are for your information only and are subject to change."
2. A proposal stated, "This proposal shall expire 30 days from this date unless extended in writing by the ____ Company." (In this instance, award was scheduled to be approximately 45 days after proposal submittal date.)
3. A proposal for lease of equipment contained lease plans of a duration shorter than that which had been requested in the RFP.
4. A personal services contract stated, "In its judgment, believes that the schedules set by the state are extremely optimistic and probably unobtainable. Nevertheless, will exercise its best efforts..."
5. A proposal stated, "This proposal is not intended to be of a contractual nature."
6. A proposal contained the notation, "prices are subject to change without notice."
7. A proposal was received for the purchase of equipment with unacceptable modifications to the Purchase Contract.
8. A proposal for lease of equipment contained lease plans of a duration longer than that which had been requested in the RFP with no provision for earlier termination of the contract.
9. A proposal for lease of equipment stated, "...this proposal is preliminary only and the order, when issued, shall constitute the only legally binding commitment of the parties."
10. A proposal was delivered to the wrong office.
11. A proposal was delivered after the date and time specified in the RFP.

12. An RFP required the delivery of a performance bond covering 50 percent of the proposed contract amount. The proposal offered a performance bond to cover "x" dollars which was less than the required 50 percent of the proposed contract amount.
13. A proposal did not meet contract goal for Disabled Veteran Business Enterprise (DVBE) Participation and did not follow the steps required by the RFP to achieve a "Good-Faith Effort."
14. A proposal appeared to meet contract goal for DVBE participation with the dollars submitted, but the bidder had miscalculated the proposal costs. When these corrections were made by the state, the bidder's price had increased and the dollars committed for DVBE participation no longer met the goal. The bidder had not followed the steps to achieve a "Good-Faith Effort."